

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re:

DESTINY PETROLEUM LLC,

Debtor.

Case No. 19-10412-SAH  
Chapter 11

**DEBTOR'S FIRST OMNIBUS MOTION FOR ENTRY OF  
AN ORDER (I) AUTHORIZING THE DEBTOR TO ASSUME  
CERTAIN EXECUTORY CONTRACTS AND (II) FIXING  
CURE AMOUNTS WITH RESPECT THERETO, WITH BRIEF  
IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

**NOTICE OF OPPORTUNITY FOR HEARING**

**Your rights may be affected. You should read this document carefully and consult with your attorney about your rights and the effect of this document.** If you do not want the court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102, no later than 14 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection on the undersigned movant/movant's attorney and any others who are required to be served. If no response or objection is timely filed, the court may grant the requested relief without a hearing or further notice.

The 14-day period includes the three (3) days allowed for mailing provided for in bankruptcy rule 9006(f).

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**ATTACHED HERETO AS EXHIBIT 1 IS A LIST OF THE EXECUTORY CONTRACTS THAT ARE SUBJECT TO THIS MOTION. PARTIES SHOULD LOCATE THEIR NAMES, EXECUTORY CONTRACTS, AND CURE AMOUNTS ON EXHIBIT 1 HERETO.**

Debtor, Destiny Petroleum LLC (the “Debtor”), by and through the undersigned counsel, respectfully files this Debtor’s First Motion for Entry of an Order (I) Authorizing the Debtor to Assume Certain Executory Contracts and (II) Fixing Cure Amounts With Respect Thereto (the “Motion”). In support thereof, the Debtor would show the Court as follows:

**JURISDICTION AND STATUTORY AUTHORITY**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The statutory predicates for the relief requested are section 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**BACKGROUND**

4. On February 6, 2019 (the “Petition Date”), the Debtor filed a voluntary petition with this Court pursuant to Chapter 11 of the Bankruptcy Code.
5. Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtor has retained possession of its assets as a debtor in possession and is continuing to operate its business.

6. No trustee, examiner, or committee has been appointed in this Chapter 11 case.

7. The factual background regarding the Debtor, including its business operations and the events leading to this Chapter 11 case, is set forth in detail in the Affidavit of Frederic Saalwachter in Support of First Day Motions [Doc. 42] and fully incorporated herein by reference.

8. Prior to the Petition Date, the Debtor entered into certain contracts with third parties, which the Debtor believes to be beneficial to the estate and the Debtor's continued operation, and which the Debtor seeks to assume through this Motion. A list of the contracts to be assumed pursuant to this Motion (the "Assumed Contracts") is attached hereto as **Exhibit 1**.

### **BRIEF IN SUPPORT**

**A. Assumption of the Assumed Contracts is a Sound Exercise of the Debtor's Business Judgment**

Bankruptcy Code section 365 authorizes a debtor to assume executory contracts and unexpired leases subject to the approval of the Court:

(a) Except as provided in . . . subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease . . . .

11 U.S.C. § 365. Bankruptcy Rule 6006 provides that “[a] proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by [Bankruptcy] Rule 9014,” which governs contested matters. Bankruptcy Rules 6006(a) and 9014.

Courts apply a business judgment standard in determining whether to approve a debtor’s decision to assume an executory contract or unexpired lease. *In re J. H. Land & Cattle Co., Inc.*, 8 B.R. 237, 238 (Bankr. W.D. Okla. 1981). The business judgment test requires only that the trustee or debtor in possession demonstrate that assumption or rejection of the contract or unexpired lease will benefit the estate. *In re Lady Baltimore Foods, Inc.*, No. 02-43429, 2004 WL 2192374, \*6 (Bankr. D. Kan. Aug. 13, 2004). Courts generally will not second-guess a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease. *In re Railyard Co., LLC*, 562 B.R. 481, 488 (Bankr. D.N.M. 2016) (citing *In re Malden Mills Indus., Inc.*, 303 B.R. 688, 701 (B.A.P. 1st Cir. 2004)).

The assumption of the Assumed Contracts is a sound exercise of the Debtor's business judgment. The Debtor has determined that the Assumed Contracts are necessary for the Debtor's ongoing business and successful reorganization. The Assumed Contracts allow the Debtor to continue its operations, producing and selling hydrocarbons. Accordingly, the business judgment standard has been satisfied, and the Debtor's assumption of the Assumed Contracts should be approved.

**B. The Debtor Has Satisfied the Applicable Requirements of Bankruptcy Code Section 365(b)**

Pursuant to Bankruptcy Code sections 365(b)(1)(A) and (B), if there has been a default in an executory contract, the trustee or debtor may not assume such contract unless, at the time of assumption of such contract, the debtor (i) cures or provides adequate assurance that it will promptly cure the default and (ii) compensates or provides adequate assurance of prompt future compensation for actual pecuniary losses resulting from such default. 11 U.S.C. §§ 365(b)(1)(A)-(B). The Debtor proposes the cure payments related to the assumption of the Assumed Contracts set forth on the attached Exhibit 1.

The Debtor proposes to make such cure payments within sixty (60) days of the entry of an order approving the Motion. There is adequate assurance of the Debtor's performance under the Assumed Contracts and of payment of the cure amounts related thereto based on the Debtor's ongoing revenues. Since commencing this case, the Debtor has generated positive cash flows, and the Debtor is unaware of any changes in its operations that would alter this trend.

For all of the foregoing reasons, and in the sound exercise of its business judgment, the Debtor believes that the assumption of the Assumed contracts is warranted and appropriate. Thus, the Court should enter an order approving this Motion.

### **C. Compliance With Bankruptcy Rule 6006(f)**

Bankruptcy Rule 6006(f) establishes requirements for a motion to assume multiple executory contracts or unexpired leases that are not between the same parties, stating, in pertinent part, that such a motion shall:

- (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- (2) list parties alphabetically and identify the corresponding contract or lease;
- (3) specify the terms, including the curing of defaults, for each requested assumption or assignment;
- (4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- (6) be limited to no more than 100 executory contracts or unexpired leases.

Bankruptcy Rule 6006(f). The Debtor submits that the contents of this Motion, in conjunction with the attached Exhibit 1, comply with the requirements of Bankruptcy Rule 6006(f).

**D. Reservation of Rights**

The Debtor reserves the right to modify the Debtor's election to assume any Assumed Contracts or to modify any proposed cure amounts prior to the entry of an order granting this Motion. The Debtor reserves any and all rights, claims, and defenses with respect to the characterization of the Assumed Contracts under the Bankruptcy Code, applicable nonbankruptcy law, or otherwise, including, but not limited to, any and all rights to argue that the Assumed Contracts do not constitute executory contracts under applicable law.

**CONCLUSION**

WHEREFORE, for the reasons stated herein, the Debtor respectfully requests that this Court enter an order (1) authorizing the Debtor to assume the executory contracts identified herein; (2) fixing the cure amounts with respect thereto; and (3) granting such other and further relief as the Court deems appropriate.

Respectfully submitted,

*/s/ Clayton D. Ketter*

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**Attorneys for Destiny Petroleum LLC**

**CERTIFICATE OF SERVICE**

On June 3, 2019, the foregoing document was served by first class mail, postage prepaid, on the parties listed on the attached mailing list.

*/s/ Clayton D. Ketter*

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Clayton D. Ketter, OBA No. 30611

Label Matrix for local noticing

1087-5

Case 19-10412

Western District of Oklahoma

Oklahoma City

Mon Jun 3 11:37:30 CDT 2019

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c/o Thomas J Lasater

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Wichita, KS 67201-0997

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Oklahoma City, OK 73160

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4700 NW 23rd St

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Oklahoma City, OK 73127-2037

Quest Automated Services, LLC

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Hall, Estill, et al.

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30563 CR 960  
Medford OK 73759-6089Alice Smrcka  
Trustee of Algic F Smrcka Family Trust  
30563 CR 960  
Medford OK 73759-6089All American Trucking LLC  
24551 North Luther Road  
Luther OK 73054-9751Altus GTS Inc  
Suite 300  
2400 Veterans Memorial Blvd  
Kenner LA 70062-8725American Piping Inspection Inc  
17110 East Pine Street  
Tulsa OK 74116-4901American Trucking Inc  
c/o Robert D. Householter  
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Sawyer, KS 67134Amerine Utilities Construction Inc  
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Great Bend KS 67530-1546Anchor Drilling Fluids USA LLC  
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Tulsa OK 74136-1211Anchor Drilling Fluids USA LLC  
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Tulsa, OK 74136-1036Ann L Conus and Howard Conus  
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Houston, TX 77024-1276Archrock Partners  
PO Box 201160  
Dallas TX 75202-8211BOP Ram-Block & Iron Rentals, Inc  
717 S Custer  
Weatherford, OK 73096-9714BOP RamBlock  
PO Box 872  
Weatherford OK 73096-0872Baker Hughes Oilfield Operations LLC  
PO Box 301057  
Dallas TX 75303-1057Baseline Energy Services  
PO Box 470929  
Fort Worth TX 76147-0929Basic Energy Services LP  
PO Box 841903  
Dallas TX 75284-1903Beicip  
1880 South Dairy Ashford Suite 630  
Houston TX 77077-4781Beicip Inc  
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Crescent OK 73028-3061

Cimarron Valley Rentals LLC  
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Nash OK 73761-5026

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Shattuck OK 73858

Paul Francis Farms LLC  
5909 NW 78th Terrace  
Kansas City MO 64151

Addresses marked (c) above for the following entity/entities were corrected  
as required by the USPS Locatable Address Conversion System (LACS).

US Securities and Exchange Commission  
Fort Worth Regional Office  
Suite 1900 Unit 18  
801 Cherry Street  
Fort Worth TX 76102

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Baker Hughes Oilfield Operations, LLC

(u) Hawley Services Inc.

(d) Destiny Oil Partners LLC  
2524 North Broadway  
Oklahoma City, OK 73160

(d) Destiny Petroleum LLC  
2524 North Broadway  
Oklahoma City, OK 73160

(d) Hetrick Electric LLC  
P.O. Box 308  
Blackwell, OK 74631-0308

(u) Greg Myles

End of Label Matrix  
Mailable recipients 182  
Bypassed recipients 6  
Total 188

**EXHIBIT 1**  
**Assumed Executory Contracts and Unexpired Leases**

	<b>Counterparty</b>	<b>Assumed Executory Contract</b>	<b>Cure Amount</b>
1.	Baker Hughes Oilfield Operations, LLC PO Box 4740 Houston, TX 77210-4740	Well Test Rental Agreement – Linda 2-5H	\$9,209.00
2.	Coffeyville Resources Refining and Marketing LLC 10 East Cambridge Circle Suite 250 Kansas City, KS 66103	Crude Oil Purchase Agreement dated January 5, 2017	\$0.00
3.	Targa Pipeline Mid-Continent WestOK LLC 14000 Quail Springs Parkway Suite 215 Oklahoma City, OK 73134	Gas Purchase Agreement for sale of gas.	\$0.00
4.	Targa Pipeline Mid-Continent WestOK LLC 14000 Quail Springs Parkway Suite 215 Oklahoma City, OK 73134	Gas Purchase Agreement dated November 1, 2017	\$10,000.00